

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:B09-PLR-134430-02

Date:

August 21, 2002

Re:

Legend

Date 1 =
Grantor =

Trust =
Son =
\$X =
Law Firm =
Date 2 =
Date 3 =
Year 1 =
Year 2 =

Dear :

This is in response to your letter dated June 21, 2002, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to make an allocation of the Generation-Skipping Transfer (GST) exemption.

The facts and representations submitted are summarized as follows: On Date 1, Grantor created Trust, an irrevocable trust, for the benefit of Son and his children. Grantor conveyed to Trust real property valued at \$X.

Article II of Trust provides that each year in which Grantor is living, Son and each of his children who are then living shall have a limited noncumulative right to withdraw gifts made to the trust.

Article IV, Paragraphs A, B, and C provide that the trustee shall distribute all of

the net income to Son or for his benefit at least quarter-annually during his lifetime. The trustee also shall distribute to Son or use for his benefit, so much or all of the principal of the trust as trustee considers desirable for his support, medical care and education. The trustee shall also distribute to Son, such portions or all of the principal of the trust as Son requests in writing pursuant to Son's limited right to withdrawal under this article.

Article IV, Paragraph D provides that the trustee shall distribute so much or all of the principal of the trust to any one or more of his children as Son shall appoint during his lifetime or by his will referring specifically to this power of appointment.

Article IV, Paragraph E provides that upon Son's death and to the extent he does not exercise his power to appoint the trust estate, the trustee shall divide the trust into separate equal shares, as to provide one share for the benefit of each child of Son who is then living and one share for the benefit of the then living descendants of each child of Son who is then deceased. Each share for the benefit of a child of Son shall be administered as set forth in Article V and each share for the benefit of the then living descendants of the deceased child of Son shall be distributed, subject to Article VI, to such descendants per stirpes.

Article V, Paragraph A provides that for any trust established for a child of Son, the trustee shall distribute so much or all of the net income of the separate trust to or for the benefit of such child, at any time and from time to time, as the trustee considers desirable to provide for the child's support, medical care and education until such child has attained the age of twenty-five. Thereafter, the trustee shall distribute all of the net income to the child at least quarterly.

Article V, Paragraph B provides that until the trust is completely distributed, the trustee shall distribute to or for the benefit of the child, so much or all of the principal as the trustee considers desirable to provide for the child's support, medical care and education.

Article V, Paragraph C provides that after the child attains the age of thirty, the trustee shall distribute to the child such portions, but not to exceed one half of the value thereof, of the principal as the child, at any time and from time to time, requests in writing. After attaining the age of thirty-five, the child may request in writing as much or all of the balance of the principal.

Article V, Paragraph D provides that if the child dies before receiving his or her entire trust, the trustee shall distribute the child's trust as the child shall appoint by his or her will referring specifically to the power of appointment. If the child fails to exercise this power of appointment, the trustee shall distribute the trust to the child's then living descendants per stripes, if any, otherwise to the then living descendants of Son. Any assets which pass to a then living descendant of Son shall be added to and be administered in accordance with any trust already in existence hereunder for the benefit

of such child.

No distributions have been made from Trust except for distributions of income to Son, as required by Article IV, Paragraph A.

Law Firm prepared Grantor's United States Gift (and Generation-Skipping Transfer) Tax Return (Form 709) for the gifts made on Date 1. On Schedule C of the return, Grantor allocated \$X of her GST exemption to the gift to Trust. Law Firm sent the return and other documents to Grantor via Federal Express on Date 2. Grantor represents that she signed the Form 709 and mailed it to the Internal Revenue Service (Service) on or before Date 3.

In Year 1, during a review of Grantor's estate plan, questions arose as to the amount of previously reported gifts, as well as the amount of GST exemption that had been previously used. At the time, Law Firm was unable to locate its copy of the Form 709 for Year 2 which reported the Date 1 gift, so it filed Form 4506 requesting a copy of the return from the Service. The Service, however, had no record that Grantor's Form 709 for Year 2 was filed. Law Firm subsequently located its copy of the Form 709 for Year 2 in an adjacent client file.

You have requested the following rulings: (1) an extension of time under § 2642(g) of the Internal Revenue Code and §§ 301.9100-1 and 301.9100-3 to make an allocation of your GST exemption; and (2) that such allocation is to be made based on the value of the transferred property on the date transferred to Trust.

Section 2601 imposes a tax on every generation-skipping transfer (GST). A GST is defined under § 2611(a) as (1) a taxable distribution, (2) a taxable termination, and (3) a direct skip.

Section 2631(a) provides that, for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption of \$1,000,000 (adjusted for inflation under § 2631(c)) that may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor. Section 2631(b) provides that any allocation under § 2631(a), once made, shall be irrevocable.

Section 2632(a) provides that any allocation by an individual of his or her GST exemption under § 2631(a) may be made at any time on or before the date prescribed for filing the estate tax return for such individual's estate (determined with regard to extensions), regardless of whether such a return is required to be filed.

Section 26.2632-1(b)(2) of the Generation-Skipping Transfer Tax Regulations provides that an allocation of GST exemption to property transferred during the transferor's lifetime, other than in a direct skip, is made on Form 709.

Section 2642(b)(1) provides that, except as provided in § 2642(f), if the allocation of the GST exemption to any transfers of property is made on a gift tax return filed on or before the date prescribed by § 6075(b) for such transfer or is deemed to be made under § 2632(b)(1) or (c)(1), the value of such property for purposes of § 2642(a) shall be its value as finally determined for purposes of chapter 12 (within the meaning of § 2001(f)(2)), or, in the case of an allocation deemed to have been made at the close of an estate tax inclusion period, its value at the time of the close of the estate tax inclusion period, and such allocation shall be effective on and after the date of such transfer, or, in the case of an allocation deemed to have been made at the close of an estate tax inclusion period, on and after the close of such estate tax inclusion period.

Section 2642(g)(1)(A) provides, generally, that the Secretary shall by regulation prescribe such circumstances and procedures under which extensions of time will be granted to make an allocation of GST exemption described in § 2642(b)(1) or (2), and an election under § 2632(b)(3) or (c)(5). Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of this paragraph.

Section 2642(g)(1)(B) provides that in determining whether to grant relief under this paragraph, the Secretary shall take into account all relevant circumstances, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. For purposes of determining whether to grant relief under this paragraph, the time for making the allocation (or election) shall be treated as if not expressly prescribed by statute.

Notice 2001-50, 2001-34 I.R.B. 189, provides that under § 2642(g)(1)(B), the time for allocating the GST exemption to lifetime transfers and transfers at death, the time for electing out of the automatic allocation rules, and the time for electing to treat any trust as a generation-skipping trust are to be treated as if not expressly prescribed by statute. The Notice further provides that taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose due date is prescribed by a regulation (and not expressly provided by statute). Under § 301.9100-1(b), a regulatory election includes an election whose due date is prescribed by a notice published in the Internal Revenue Bulletin. In accordance with § 2642(g)(1)(B) and Notice 2001-50, taxpayers

may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

Section 301.9100-3(b)(1)(ii) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer failed to make the election because of intervening events beyond the taxpayer's control.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, Grantor is granted an extension of time of 60 days from the date of this letter to make an allocation of her available GST exemption, with respect to the Date 1 transfer to Trust. The allocation will be effective as of Date 1, the date of the transfer to Trust, and the gift tax value of the transfer to Trust will be used in determining the amount of GST exemption to be allocated to Trust.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as specifically ruled herein, we express or imply no opinion on the federal tax consequences of the transaction under the cited provisions or under any other provisions of the Code.

This ruling is directed only to the taxpayers requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent. The allocation should be made on a Form 709 United States Gift (and Generation-Skipping Transfer) Tax Return and filed with the Internal Revenue Service Center, Cincinnati, OH 45999. A copy of this letter should be attached to the Form 709. A copy is enclosed for this purpose.

Sincerely,
Heather Maloy
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures

Copy for section 6110 purposes
Copy of this letter